

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO.: 04-12447-RCL

JEFFREY SMITH,

Plaintiff

v.

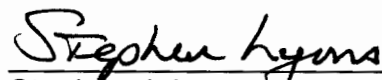
CHARLIE'S PLACE, INC.,

Defendant

DEFENDANT'S CERTIFICATION PURSUANT TO LOCAL RULE 16.1(D)(3)

The defendant hereby certifies that his counsel has attempted to confer with counsel for the plaintiff in order to agree on a joint discovery plan; to establish a budget for the costs of conducting the full course - and various alternative courses - of the litigation; and, to discuss the possible resolution of the litigation through settlement or the use of alternative dispute resolution programs such as those outlined in Local Rule 16.4. Despite repeated attempts between May 9, 2005 and May 13, 2005, counsel for the defendant was unable to contact counsel for the plaintiff by telephone or facsimile.

Signed this date under the pains and penalties of perjury.


Stephen J. Lyons

Dated: May 18, 2005

KLIEMAN, LYONS, SCHINDLER & GROSS

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
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VIA FACSIMILE AND MAIL

May 18, 2005

Edward N. Garno, Esquire
592 Essex Street
Lawrence, MA 01840

Re: Jeffrey Smith v. Charlie's Place, Inc.
Civil Action No. 04-12447-RCL

Dear Mr. Garno:

I have attempted to reach you by telephone and facsimile on a number of occasions over the past week but your lines have been out of order.

My purpose in attempting to reach you was to confer with you about a joint discovery schedule and the defendant's motion to stay. When I was unable to reach you and when you did not attempt to contact me last week, I sent you a letter with a proposed discovery plan and indicated that I wished to confer with you. Again, when I was unable to reach you and when you did not respond to my letter or attempt to telephone me, I had no choice but to file the defendant's motion for a stay.

This morning, I received via a new facsimile number from you a document entitled Joint Statement Pursuant to Local Rule 16.1(D) which you apparently prepared. Again, you made no attempt to contact me prior to preparing and filing this document. I also note that the so-called joint statement prepared by you only sets out the plaintiff's plan for discovery even though you are aware that I disagree with your discovery plan and had proposed several alternatives in my letter of May 11, 2005.

Local Rule 16.1(D) clearly states that parties are required to confer prior to the scheduling conference for the purpose of discussing a joint discovery schedule; establishing a budget for the costs of conducting litigation; and, considering resolution of the litigation through alternative dispute resolution programs.

KLIEMAN, LYONS, SCHINDLER & GROSS

Edward N. Garno, Esquire
May 18, 2005
Page Two

I do not know why your telephone and facsimile lines were out of order last week or the reason you made no attempt to confer with me in advance or why you chose to disregard the proposal I made for a discovery plan in my letter of May 11, 2005 in the joint statement you prepared. I only know that your failure to communicate with me makes it very difficult to comply with the Local Rules concerning the early assessment of cases and motion practice.

Because, once again, you leave me with no alternative, I am forced to file a separate statement under Rule 16.1(D), a copy of which is attached.

Please be advised that the Court has rescheduled the time for tomorrow's Conference to 9:00 a.m.

Very truly yours,

Stephen J. Lyons

SJL/pjk
encl.